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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/581,397

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EXAMINER

RECEK, JASON D

ART UNIT

PAPER NUMBER

2442

NOTIFICATION DATE

DELIVERY MODE

11/27/2009

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary	Application No. 10/581,397	Applicant(s) YAMASAKI, YASUHIRO	
	Examiner JASON RECEK	Art Unit 2442	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 June 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-30 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 02 June 2006 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☒ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>02 June 2006; 13 August 2009</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This is in response to application 10/581397 filed on June 2nd 2006, in which claims 1-30 are presented for examination.

Status of Claims

Claims 1-30 are pending, of which claims 1-3, 11-13 and 21-23 are in independent form.

Claims 11-30 are currently rejected under 35 U.S.C. 101.

Claims 1-30 are currently rejected under 35 U.S.C. 102(e).

Claims 1-30 are currently rejected under 35 U.S.C. 112, second paragraph.

Priority

1. Acknowledgment is made of applicant's claim for foreign priority based on an application filed in Japan on December 3rd 2003. It is noted, however, that applicant has not filed a certified copy of the 2003-404831 application as required by 35 U.S.C. 119(b).

Information Disclosure Statement

1. The information disclosure statement filed 6/2/06 fails to comply with 37 CFR 1.98(a)(2), which requires a legible copy of each cited foreign patent document; each

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non-patent literature publication or that portion which caused it to be listed; and all other information or that portion which caused it to be listed. It has been placed in the application file, but the information referred to therein for which no copy was provided has not been considered.

2. The information disclosure statement filed 8/13/09 fails to comply with 37 CFR 1.98(a)(3) because it does not include a concise explanation of the relevance, as it is presently understood by the individual designated in 37 CFR 1.56(c) most knowledgeable about the content of the information, of each patent listed that is not in the English language. It has been placed in the application file, but the information referred to therein has not been considered.

Drawings

3. Figures 6-7 should be designated by a legend such as --Prior Art-- because only that which is old is illustrated. See MPEP § 608.02(g). Corrected drawings in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 101

4. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 11-30 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Regarding claims 11-13, they are apparatus claims however they do not recite any tangible elements, the "units" recited by the claims can consist entirely of software in view of the specification (pg. 18 ln. 21-25). Software per se is not patentable subject matter. Claims 14-20 are rejected based on their dependency.

Regarding claims 21-23, they are directed towards a "program". Computer programs are not patentable unless they are embedded on a computer storage medium. See MPEP 2106.01. The specification describes such media (pg. 26 ln. 14-18) however limitations from the specification are not read into the claims. Claims 24-30 are rejected based on their dependency.

Claim Rejections - 35 USC § 112

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 1-30 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

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7. The claims are generally narrative and indefinite, failing to conform with current U.S. practice. They appear to be a literal translation into English from a foreign document and are replete with grammatical and idiomatic errors.

8. Claim 1 recites "obtained according to said data..." however it is not clear what is obtained".

9. Claim 2 recites the limitation "the monitoring result" in line seven, "the data amount" in line eight, and "the data storing unit" in line eight. There is insufficient antecedent basis for this limitation in the claim.

10. In Claim 2, the phrase "network situation, does not exist for a predetermined period" is indefinite. Even in light of the specification, it is unclear what is considered a network situation.

11. Claim 3 contains similar language to claims 1 and 2, and therefore is indefinite for the same reasons.

12. Claim 4 recites "according to another function ...", it is unclear what this function is and as a result the claim is indefinite.

13. Claim 5 recites "fixing a value in proportion to one divided by positive of said empty data amount ... a value in proportion to a value multiplied by positive of said empty data", this phrase cannot be deciphered as written and as a result renders the claim indefinite. Claim 5 also recites "or a value required in these combination", the combination referred to cannot be determined and thus the claim is rendered indefinite.

14. Claim 6 recites "a value of a function which decreases monotonously". The term "monotonously" is a relative term which renders the claim indefinite. The term is not

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defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention.

15. Claim 6 recites the limitation "the individual function" in line ten. There is insufficient antecedent basis for this limitation in the claim.

16. Regarding claims 7, 17 and 27, the phrase "such as" renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention. See MPEP § 2173.05(d).

17. Regarding claims 8, 18 and 28, the phrase "such as" renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention. See MPEP § 2173.05(d).

18. Claims 11-16 and 21-26 correspond to claims 1-6 and thus are indefinite for similar reasons.

19. Claims 8, 10, 18, 20, 28 and 30 depend from a rejected claim and thus are also rejected.

Claim Rejections - 35 USC § 102

20. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States

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only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

21. Claims 1-30 are rejected under 35 U.S.C. 102(e) as being anticipated by Aweya et al. US 6,690,645 B1.

The claims are being interpreted as the examiner can best understand them despite the numerous indefinite issues.

Regarding claim 1, Aweya teaches “monitoring data amount within a data storing unit” monitoring queue occupancy (col. 2 ln. 35-42);

“requiring a receivable amount to take a value smaller than empty data amount of the data storing unit” filter queue in response to occupancy (i.e. don't accept packet if there is no room in the queue) to maintain desired queue occupancy (col. 2 ln. 49-51 and col. 2 ln. 65 – col. 3 ln. 4); and

“informing the data transmission terminal of said receivable amount” informing sender of congestion (col. 3 ln. 26-40).

Regarding claim 2, Aweya discloses “determining transmissive amount in data transmission processing, according to a judgment result whether transmission amount is reduced or not, when transmission data based on the monitoring result of the data amount” determining amount of data allowable and possibly reducing transmission rate (col. 5 ln. 4-67). The term “a network situation” is not given patentable weight because

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as indicated in the 112 rejection above it is unclear what a network situation is. Aweya avoids congestion which is a type of network situation (col. 5 ln. 64-67).

Regarding claim 3, it corresponds to claims 1 and 2 and those corresponding parts are rejected for similar reasons. Aweya also discloses "a transmissive amount to be informed to the data transmission terminal" as informing the sender of congestion and thus indicating that the sender needs to reduce the transmissive amount (col. 12 ln. 64 – col. 13 ln. 3).

Regarding claim 4, Aweya discloses "setting a plurality of thresholds for said empty data amount within the data storing unit" as setting desired queue occupancy (col. 5 ln. 15-30), and "determining a receivable amount to take a value smaller than said empty data amount ... according to another function" marking/dropping packets according to the function (col. 5 ln. 43-67).

Regarding claim 5, this claim cannot be understood in light of the 112 issues (see above) and therefore an art rejection would be inappropriate. All that can be determined is that the claim relates to setting thresholds. Aweya also discusses thresholds (col. 8 ln. 48 - 63).

Regarding claim 6, Aweya discloses "setting a plurality of thresholds for said empty data amount within the data storing unit and fixing as a receivable amount, a

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value of a function which decreases ... as the empty data amount decreases” generate threshold (col. 8 ln. 52-54), function changes according to queue occupancy (col. 8 ln. 30-40).

Regarding claim 7, Aweya discloses “judging whether the transmissive amount is reduced or not” control transmission rate (col. 12 ln. 35-41, Fig. 9). The remaining limitations after the term “such as” are not considered part of the claim (see the 112 rejection above).

Regarding claim 8, Aweya discloses “judging that the transmissive amount is initialized when the data storing unit continues empty for a predetermined period” as initializing settings to zero (col. 8 ln. 1-15).

Regarding claim 9, part of it corresponds to claim 8 and that part is rejected for the same reasons. Aweya also discloses “predetermined period being determined according to the information for specifying a user...” as the user can set the predetermined parameters (col. 6 ln. 35). The remaining limitations after the term “such as” are not considered part of the claim (see the 112 rejection above).

Regarding claim 10, Aweya discloses “judging that the transmissive amount is not initialized” as a packet arrival signal, thus Aweya is able to determine when transmission has started (col. 11 ln. 44-54).

Regarding claims 11-20, they are directed towards an apparatus which corresponds to the method of claims 1-10. Therefore, they are rejected for similar reasons.

Regarding claim 21-30, they are directed towards a program which corresponds to the method of claims 1-10. Therefore, they are rejected for similar reasons.

Conclusion

22. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Ng et al. US 2006/0089990 A1 discloses a method for performing session relay (abstract).

Takano US 2003/204601 A1 discloses a session relay system (abstract).

Swami US 2009/0185485 A1 discloses managing congestion over a network (abstract).

Chapman et al. US 2006/0039285 A1 discloses managing bandwidth of a data flow to avoid congestion (abstract).

Bergamasco et al. US 2005/0141419 A1 discloses modifying TCP sessions to provide flow control (abstract).

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to JASON RECEK whose telephone number is (571)270-1975. The examiner can normally be reached on Mon - Fri 9:00am-5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Saleh Najjar can be reached on (571) 272-4006. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Jason Recek/
Examiner, Art Unit 2442
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/Faruk Hamza/
Examiner, Art Unit 2455